either of these, to support this disqualification. The purpose of such a provision is to secure to litigants a fair and impartial trial by an absolutely unbiased and unprejudiced tribunal. Next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. "Not only must the judges presiding over the courts be honest, unbiased, impartial, and disinterested in fact, but it is of the utmost importance that all suspicion to the contrary be jealously guarded against, and, if possible, completely eliminated, if we are to maintain and give full force and effect to the high ideals and salutary safeguards written in the organic law of the State." Much stress is laid upon this aspect of the situation in the principal case and in many others.[17] The full force of this is seen in one case where the appellate court upheld the judge's right to sit, but after granting a new trial on other grounds, strongly advised that he have another judge sit on the rehearing.[18]

THE RIGHT TO REGULATE THE PRACTICE OF MEDICINE UNDER THE POLICE POWER.—Every State under its police power has the right to provide for the general welfare of its people. Numerous statutes have been justified under the power of the State to provide for the public safety, order, morals, and health. One of the most important subjects for regulation in connection with the public health is the practice of medicine and surgery. This power has long been recognized.[1] All the States of the Union now have some kind of board whose duty it is to regulate the practice of medicine, and their chief duty is to grant or refuse licenses to applicants who desire to practice. The appointment and maintenance of these boards is universally held constitutional.[2] Everyone has the constitutional right to engage in any lawful trade or occupation he desires, subject only to reasonable regulation, and the requirement that a license be obtained from a board of examiners, duly appointed by the State, before he can practice medicine is a reasonable regulation.[3]

In most States the board which grants licenses has also the power to revoke them.[4] Both of these acts are within the scope of the

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[17] See especially Crook *v.* Newborg, *supra;* Yazoo & M. V. R. Co. *v.* Kirk, *supra.* But some cases presume that a judge is of too high character to be influenced by any impartiality. Allison *v.* Southern Ry. Co., 129 N. C. 336, 40 S. E. 91.

[18] Patrick *v.* Crowe, 15 Col. 543, 25 Pac. 985.

[1] *Ex parte* Smith, 10 Wend. (N. Y.) 449; Eastman *v.* State, 109 Ind. 278, 10 N. E. 97.

[2] Dent *v.* West Virginia, 129 U. S. 114; State *ex rel* Burroughs *v.* Webster, 150 Ind. 607, 50 N. E. 750.

[3] Dent *v.* West Virginia, *supra.*

[4] See Wolf *v.* State Board, 109 Minn. 360, 123 N. W. 1074; People *v* McCoy, 125 Ill. 289, 17 N. E. 786.

police power and their object is the same; that is, to exclude incompetent and unworthy persons from the practice of medicine.[5] But the right of a person to practice medicine, especially after he has obtained a license, is a very important right and should not be interfered with lightly.[6] Some courts are very unwilling to sustain the action of the State boards in revoking the licenses of medical practitioners. This is shown by three decisions that the right to practice medicine is a "property right" or an "estate," and that the language used by the statutes authorizing revocation is too vague and indefinite to be upheld.[7] However, the weight of authority sustains the validity of revocation under statutes using similar language,[8] when due notice is given before revocation.[9]

The question sometimes arises as to when a doctor's license may be revoked for advertising. Under the ethical canons of the medical profession doubtless all advertising of medical skill is unprofessional. But mere unethical conduct without more is clearly insufficient ground for revocation of a license to practice.[10] There must be some element of fraud or deception. If this is present the revocation is constitutional.[11]

In the recent case of *Chenoweth* v. *State Board of Medical Examiners* (Col.), 141 Pac. 132, it was held that a statute authorizing the State Board of Medical Examiners to revoke the license of any practitioner who caused the publication of any advertisement relative to any disease of the sexual organs is invalid, as it authorizes the revocation of a license for conduct not necessarily immoral or injurious to the public.

On reason and principle it would seem that there are certain grounds of public policy which support this statute. It would doubtless be injurious to the public morals to lead people to believe that venereal diseases are ailments of little or no consequence. For it is an undisputable fact that the greater the perils which infest immorality, the more moral the public will be.

On the other hand it would be beneficial to the public to have all cases of venereal and sexual diseases in the hands of competent

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[5] Meffert *v.* Packer, 66 Kan. 710, 72 Pac. 247, later affirmed in 195 U. S. 625.

[6] In People *v.* McCoy, 125 Ill. 289, 17 N. E. 786, it was said: "The right of a citizen to practice his profession, for which he has expended time and money to qualify himself, is too important to be taken away trom him without some reasonable cause. It must be for some act or conduct that would, in the common judgment, be deemed, 'unprofessional' or 'dishonorable.'"

[7] Hewitt *v.* Board, 148 Cal. 590, 84 Pac. 39; Matthews *v.* Murphy, 23 Ky. L. 750, 63 S. W. 785; Czarra *v.* Board, 25 App. D. C. 443.

[8] *Ex parte* Smith, *supra;* Berry *v.* State (Tex.), 135 S. W. 631. See also Wolf *v.* State Board, *supra.*

[9] See State *v.* Schultz, 11 Mont. 429, 28 Pac. 643.

[10] People *v.* McCoy, *supra.*

[11] State *ex rel* Feller *v.* State Board, 34 Minn. 391, 26 N. W. 125; State Board *v.* McCrary, 95 Ark. 511, 130 S. W. 544; Criton *v.* Board of Examiners (Ariz.), 114 Pac. 962.

physicians, as this would tend to prevent their spread and ultimately wipe them out. It would seem, therefore, that an advertisement relative to sexual diseases, made in good faith, free from vulgarity and obscenity, would controvert no rule of public policy. Hence the statute which provides for revocation of a physician's license for any advertisement relative to the sexual organs was rightfully held unconstitutional.

In the case of *Czarra* v. *Board of Medical Examiners*,[12] the appellant published obscene and indecent pamphlets relating to his ability to cure sexual diseases. It was attempted to revoke his license under a statute which provided for revocation for "unprofessional or dishonorable conduct." The opinion stated *obiter* that such conduct was no doubt both "unprofessional" and "dishonorable" but the court held the statute void for uncertainty.

So it seems that a statute which would accomplish the desired result should provide for the revocation of one's license who should cause to be published any obscene or vulgar advertisement relative to the sexual organs or which tends to deceive or defraud the public.

MUNICIPAL CORPORATIONS AND PRIVATE ENTERPRISE.—It is well settled that a municipality cannot engage in a purely private business enterprise when that enterprise is unattended by a public need.[1] Nor can it engage in a project of a nature other than governmental, without legislative sanction.[2]

The question of municipal engagement in alleged private enterprise is one primarily of taxation, arising on the ability of the State to tax for a purpose not public in its nature. Hence, although the question is one of taxation the conflict of judicial opinion centers around the application of the rule defining public purpose;[3] for a

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[12] *Supra.*

[1] Opinion of the Justices, 58 Me. 509; Haywood *v.* Red Cliff, 20 Col. 33, 36 Pac. 795.

[2] Atty. Gen. *v.* Detroit, 150 Mich. 310, 113 N. W. 1107, 121 Am. St. Rep. 625, where without express grant, it was held that a city could not manufacture bricks even for paving purposes when the bricks were procurable on the market. But see Schneida *v.* Menasha, 118 Wis. 298, 95 N. W. 94, 99 Am. St. Rep. 996, holding that a city has authority by implication to own and run a stone quarry as incidental to its street paving functions.

[3] COOLEY, CONST. LIM., 6 ed. 599: "In this place we do not use the word *public* in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority, the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot box; and there are other cases where the line of distinction between that which is allowable and that which is not is so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different."